

## NOTICE OF FILING

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### Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
File Number:	QUD429/2019
File Title:	GILLIAN LINDA NORMAN & ANOR v STEVEN NEVILLE STAATZ AS LIQUIDATOR OF WOLLUMBIN HORIZONS PTY LTD (IN LIQUIDATION) ACN 606 581 364 & ORS
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 18/07/2019 8:33:50 AM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Affidavit

No. - of 20

Federal Court of Australia

District Registry: QLD

Division: Appeal – On Appeal from the Federal Court – No.QUD32/2018

First Appellant; Gillian Norman

Second Appellant; Ron Berry

Affidavit of: Ron berry

Address: 222 Stokers Rd Stokers Siding

Occupation: Self-employed

Date: 4/7/2019

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I Ron Berry of 222 Stokers Rd Stokers Siding hereby affirm:

I am the second appellant and I am authorised to make this affidavit. Statements in this affidavit are true based on my knowledge and which are true to the best of my knowledge, information and belief based on my inquiries of relevant persons.

~~Sworn~~ / Affirmed by the deponent  
at Murwillumbah  
in NSW  
on 4/7/2019  
Before me:

Signature of deponent

Signature of witness

Patricia J Mallon  
Justice of the Peace in NSW  
Reg No: 152944  
Court House  
MURWILLUMBAH NSW 2484

I, Patricia J Mallon, a JP for NSW 152944, certify:  
(full name of JP) (JP registration number)

- (\* include only the text that applies)
1. "I saw the face of the declarant / deponent OR  
"I did not see the face of the declarant / deponent because  
~~he/she was wearing a face covering, but I am satisfied that~~  
~~he/she had a special justification for not removing it, and~~
  2. "I have known the person for at least 12 months OR  
"I confirmed the person's identity with NSW DRIVER LICENCE  
(describe identification document relied on) 17916DR
- Signature of JP: [Signature] Date: 4-7-19

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## Affidavit of Ron Berry

I appeal against the decision of Judge Derrington in the Federal Court of QLD in the case of the liquidation of Woolumbin Horizons QLD 32/2017 for the plaintiff Neville Statz. -

There are several mistakes of fact I would like to point out from the findings.

1. I did not appear in person as stated on the third page.

2. In paragraph 2 Judge Derrington states; "The plaintiff is justified in treating real property ... as being held by the Company, as bare trustee, subject to any charge or lien that the Company has over the Property to secure payment of any debts properly incurred by the Company as trustee, pursuant to a constructive trust (the Trust) for those parties who subscribed money for the purposes of becoming members of the Bhula Bhula Community."

3. The company, in the form it was - with an unelected director owning the single shareholding, was not the intended trustee of the trust and should therefore not be considered as the trustee of any subsequent trust or the director be allowed to place the company's assets into liquidation unilaterally. "Contributors" or "subscribers" should rightly be termed unregistered purchase money creditors as they were purchasing co-proprietary rights to the land title not a contribution to a trust or project, educational body or otherwise. Bhula Bhula Community is not the name of the Incorporated Association which was the intended owner of the single share in the company and therefore act as the body granting co-proprietary rights to its membership. The liquidator should rightly have been appointed by a special resolution of members of the association who should have voted three directors from the membership. Adrian Brennock was not a properly appointed director and no voting was taken to appoint him. The liquidator is therefore invalidly appointed. These facts contradict conclusions reached in paragraphs 107-108 also.

4. Paragraph 3 Judge Derrington states; "The plaintiff is justified in treating the beneficiaries of the Trust as those persons whom the plaintiff identifies as having subscribed to become members of the Bhula Bhula Community where the funds so subscribed were or were intended to be used by the subscriber in relation to the costs of acquisition of the Property, the purchase price of the Property, the discharge of the mortgage over the Property, or for the maintenance or improvement of the Property, in proportions calculated rateably to the amount of money they each contributed to the total funds subscribed for those purposes."

5. The supposed beneficiaries of the trust are also automatically members of the Community Association, contributions to the Commercial district were also to be issued membership to this association in the case of Marc and Rebecca Fagan, Brian and Elizabeth Alderman and Teleah Barnes as this property was also bought by contributors funds. All parties should rightly be termed purchase money creditors of both properties.

6. Paragraph 4 Judge Derrington states; "The plaintiff is justified in proceeding to market for sale and selling the Property in the way he considers appropriate."

7. No justification for this exists as the liquidator was improperly appointed and his claim to the land is dependant on the directors claim to the land being a valid claim, it is not. The title to the land is defeasible due to fraud on behalf of Adrian Brennock and his company Wollumbin Horizons Pty Ltd. Without determination of this a priori claim by members of the community association there is no justification for the conclusions in paragraphs 8 through to 16 either. There were several examples of improper actions of the trustee and the trust itself is also invalid and should not be

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considered a basis for the determination of land title ownership. The liquidator was improperly appointed and failed to complete the terms of agreement with creditors and is not entitled to the land title asset but as a service provider to the director has rights over the company. The land title is not a legitimate asset of the company and the costs of the liquidator should be drawn from the sale of the land for that reason. His costs ought to be capped at the maximum amount quoted to the creditors at the creditors meeting as per the agreement made then following the representations of the liquidator as to his costs and timing etc.

8. Paragraph 2 of the reasons for judgment Judge Derrington states; "...the material presented by the liquidator was admitted without relevant objection and the evidential facts on which the matter rests were not greatly disputed."

9. The matters of fact were greatly disputed and many objections made in particular in the cross claim and statements of the second and first defendant. Three separate schedules of objection were lodged by the second defendant alone and many objections were made by myself in person at various hearings.

10. Paragraph 5 of the reasons for judgment Judge Derrington states; "The Company incurred substantial debts and became insolvent."

11. There is no proof of insolvency and no proof of debt, creditors of the company were arbitrarily created on paper only by Adrian Brennock and evidence of this I attempted to present at the final hearing but was not allowed to. No services to the community were provided and debts owed to such entities as Brennock's fathers real estate firm, his personal assistant and his wife's company etc. have not been substantiated and no proof of debt has been produced or requested by the liquidator. Evidence was offered to the court at the final hearing by myself showing the fraudulent nature of these claims and other claims but this was not taken into evidence. Testimony by Mark Darwin supported this fact also.

In any case the company could have traded it's way forward, sold more sites, derived income from agisting cattle, raising funds from within the membership etc. to avoid insolvency. Had monies not been misappropriated by Brennock and associates insolvency would not have been an issue. Members had no access to financial records or company accounts which were controlled by Adrian Brennock and Cherie Stokes his personal assistant exclusively and withheld from the community despite numerous requests and promises of open disclosure. See Annexure 1. Creditors List

12. Paragraph 6 of the reasons for judgment Judge Derrington states; "The defendants to the proceedings are a number of the erstwhile Community members who claim to have a beneficial interest in the land on which the Community was sited."

13. The first and second defendants and many others have never claimed a beneficial interest in the trust but co-proprietary rights in the land as purchase money creditors.

14. Paragraph 8 of the Reasons for Judgment, Judge Derrington states; "...the second defendant has persisted in raising irrelevant and scandalous matters." and he goes on to blame her for escalating costs and negatively characterise the arguments presented.

15. The matters raised were neither scandalous nor vexatious nor irrelevant, closing statement was filed, costs were not increased markedly and were awarded against the second defendant in the case

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out repeatedly. Had the asset stripping not occurred there would be no point to the phoenix activity now. The total income from investors exceeds the value of both properties, one of which does draw income, the community was viable and a recent window of opportunity for the development application to be passed has now gone. No amount of incompetence explains this scenario, it was deliberate misappropriation and fraudulent misrepresentation that caused the demise of this community and the continuation of similar activities with fresh victims directly next door is sickening to me to witness given every regulatory authority has been informed. Attempts to warn off prospective investors through publishing a blog by the second defendant are subject to a 4.2 million dollar SLAPP action in the defamation division of the Supreme Court of NSW being heard in August 2019. Repeated attempts to protect our legal interests are ongoing.

22. Paragraph 18 of the section entitled The Facts Judge Derrington describes subscribers as; "the somewhat vulnerable persons whom he targeted for this project."

23. The vulnerability of some of the victims does not excuse or mitigate the blame for the actions of the perpetrators of the fraud or increase any amount of blame for being misled on the part of the victims of the fraud. The representations made were relied upon by the purchase money creditors in good faith and then not fulfilled.

24. In paragraph 19 of the section entitled The Facts Judge Derrington describes "the Property" as lot 3222 Kyogle rd, however the lot 3200 at Mt Burrell Commercial (the Commercial) is also part of the Property as it was also bought by subscribers funds including the loan repayments and several late contributors monies were used to purchase the Commercial which was always intended to be part of the communities assets from the outset.

25. Paragraph 51 of the section entitled pre Purchase Subscribers Judge Derrington describes the sources of funding for the purchase and in part c includes; "(c) a loan of \$550,000 (although that figure includes pre-paid interest) to the Company from Adelaide Investments (Aust) Pty Ltd which was secured by a registered mortgage on the Property.

26. This mortgage was not registered yet was executed and the operative part describes it's utility for completing an illegal phoenix move. These funds were diverted to purchase the Commercial. Community members were told the purchase was completed by Rainmaker Holdings Pty. Ltd. and Phillip Dixon and that it was to be in the private control of the director Cherie Stokes of Mt Burrell Commercial Pty. Ltd. although no voting on the matter with members was conducted nor was evidence of payment forthcoming or any disclosure of the source of purchase funds or legitimacy of the mortgage. It was described as a self managed super fund investment opportunity and was marketed as a way to buy a block of land in Bhula Bhula.

27. Similarly the assertion in paragraph 57 that the funds actually discharged a mortgage is unsupported by any factual evidence. Dispersment from the trust fund was attributed to payment of mortgage but the relationship of the company it was paid out to, Data Date Pty. Ltd. Registered in Murwillumbah, to the company Adelaide Investments Pty. Ltd. Registered in the Cayman Islands that supposedly granted the mortgage remains undisclosed.

28. Paragraph 62 Judge Derrington states; "Mr Alderman and Ms Dresden paid a further \$20,000 in respect of the "The Mount Burrell Commercial Precinct" which was a project to be established on land adjacent to the Community land. Mr and Mrs Fagan also paid \$120,000 in respect of that proposed development. However, it would appear that none of these funds were paid by the subscribers to become members of the Community."

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of the cross claim. The proceedings for the day and the cross-claim were subjected to an improper suppression order and the claim was dismissed at a hearing for joinder of parties without evidence being admitted. "Perspicacious arguments" included the presentation of proof of conflict of interest on behalf of Vincents which resulted in the Plaintiff seeking immunity from prosecution for wrongdoing in the course of the liquidation which he obviously deemed necessary, if his conduct had been merely professionally adequate, it would not be. An aggressive shutting down of any further references to Vincents senior staff member Ian McKinnon ensued and evidence offered by myself in the witness stand was refused, I was then asked to leave the stand.

16. Paragraph 16 of the section entitled The Facts, Judge Derrington states; "As the facts below establish, Mr Darwin was the driving force and controller of the scheme and, for all relevant purposes, he controlled and directed the various corporate entities used."

17. This is untrue as the person always in control of the finances and self titled "General," and the for most of the time the company director, was Adrian Brennock.

18. In the same paragraph Judge Derrington also states; "It is not necessary to reach any conclusion as to whether, in his promotion of the Community, Mr Darwin's and his associates' actions were fraudulent or reckless."

19. It has always been the contention of the first and second defendants that the issue of fraud is paramount in determining the proper ownership of the land and the legitimacy of the holding of the land title by the company and the legitimacy of the appointment of Adrian Brennock as company director at the point of liquidation. As the land title was acquired through fraud it is defeasible. In simple terms those who paid for the land should own the title. For Adrian Brennock to control the land title by virtue of a one dollar shareholding instead is a gross and obvious inequity and a product of fraud. The proper ownership of the only substantial asset of the company, the land title, is an a priori matter to the liquidation that needs to be determined before the liquidator can be allowed to sell it.

20. Paragraph 16 of the section entitled The Facts Judge Derrington states; saying of the subscribers; "...they generally trusted Mr Darwin and, despite him not fulfilling numerous promises made to them, they neither seriously pressed him to perform nor sought to protect their own legal interests until it was too late."

21. Participants trusted the good name of Wroth Wall and Associates as community lawyer and his long standing expertise in multiple occupancy matters in the area and were reassured by him on many occasions as to the above board and thorough nature of the legalities involved and assured them that due diligence and care was being taken in legal matters. He drafted the deed and had Adrian Brennock comply with it and allowed the community access to the accounts for proper management we would certainly never have entered liquidation and would not have gotten into legal trouble with Tweed Shire Council simply for deliberately not paying rates and taxes. Members pressed for performance from early on regarding issuing of membership and trust certificates, accounts, transparency and numerous other issues and despite changing the director still gained no access to the accounts. When a 'financial snapshot' was finally forthcoming it revealed around \$600,000 missing, not accounted for. This amount neatly equates with the bogus trade creditors total and the shortfall on the purchase price for the Commercial at time of purchase and the amount (550,000 plus 40,000 interest upfront) for the supposed mortgage. Nota bene; a former occupation of Adrian Brennock is as a mortgage and non-mortgage loan broker. No investigation of any of these glaring accounting anomalies have been undertaken by the liquidator despite us pointing them

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29. These were indeed equal members of the community, they were given the same representations and emails attest they were welcomed as members of the community. Sadly the Dresdens funds were fraudulently misappropriated for personal gain of Richard Moate and largely used for the purpose of funding their defamation action against the second defendant using Stone group Lawyers who were also gifted a share in the Trust by the director in lieu of payment of part of their services without consultation with members and the work was not for the benefit of the community either. They were granted a choice of a 3 acre site and in their own sworn and oral testimony believed they were buying land in Bhula Bhula Community. The funds of several members are directly traceable to the Commercial purchase and the shortfall equates with the cost of the mortgage and it is probable those members funds were redirected there also as the Commercial was marketed as a Self Managed Super Fund. I was told by Teleah Barnes that she also contributed \$100,000 which was redirected towards the Commercial purchase at the last minute at the urgent request of Richard Moate and she was also publicly granted membership of the community in exchange and a 3 acre allotment.

30. Paragraph 65 Judge Derrington states; "Although the members of the Community paid scant interest to the manner in which the trust which they believed existed operated or, if they did, they were not concerned enough to take action to enforce its performance, it is manifest that they were prepared to allow the Company and Mr Darwin to continue to promote the Community."

31. Several attempts were made to regain control from the directorship in the interest of financial transparency especially since it had been announced by Adrian Brennock the community coffers were empty. Many became suspicious and were demanding financial transparency and the opening of the books to the financial committee culminating in the election of a new director Tamite Kirkwood. There was general dissatisfaction with the interminable delays in the issuing of share certificates and lengthy email discussions over many issues not least of which was the issue of sales. I for one paid very close interest in the trust and community legal structures having had in hand the legal structures and by laws of several local communities I had lived on and had friends who were secretaries of community associations nearby who had encouraged me to read them before buying into Bhula Bhula. I had personal conversations regarding the deed in the offices of Wrothwell Wall and he reassured me as did Adrian Brennock that things were well in hand and at later meetings we would be discussing bylaws and the refinements of the legal structure. I spoke at length on several occasions with Micheal Hacek, a very knowledgeable lawyer I met on the initial tour of the property who also had a hand in devising the legalities of the ownership structure described in the video he produced with Mark Darwin to explain it. This was sent to every prospective member and was on Youtube. Nicole Stanton and Robin Bourne, community members who had negotiated a lease arrangement and were also lawyers, were very much involved with taking action to enforce its performance and were instrumental in helping the community find a way to change the directorship. Mr Darwin had been successfully promoting, finding investors and dealing with sales all along and this was his primary role as well as being on the steering committee.

32. In paragraph 80 Judge Derrington quotes Adrian Brennock to support the notion that the company was insolvent and liquidation would be necessary. In evidence in the Liquidators court book is a just legible "highlighted" quote from Mark Darwin in an SMS foreshadowing this very outcome long before this date indicating that the insolvency was deliberate and premeditated on behalf of Adrian Brennock as an attempted phoenix move. The most obvious conclusion from the evidence is once again that the reason for the anomalies in accounts and in the legal structures and methods is that of fraud not managerial deficiency, delinquency of duty or incompetence as echoed once again in paragraph 86. Obviously if the intention was to asset strip the company and defraud investors by "buying it back for cents in the dollar," a phoenix move, therefore the less evidence of any written legal claim the better hence the lack of legitimate legal documents or practices of book keeping that would establish valid legal claims. Deliberately obscuring the movement of money to

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cover up fraud is a more compelling reason and a stronger motive to minimise or leave a confounding paper trail than mere incompetence or delinquency. The fact that the perpetrators have over 16 companies registered between them and the many examples of the movement of sub \$5000 amounts between different company accounts we do have records of strongly suggests some "cuckoo smurfing" was going on and the possibility of unconscionable director related transactions was reported to ASIC by the liquidator in his report.

33. In paragraph 89 Judge Derrington points out the change of trustee in Feb 2017 was invalid and suggests it is due to a lack of professionalism. Just prior to the land purchase the directions to release trust funds were directing Wollumbin Dreamtime Pty. Ltd. to be the trustee yet the land was bought by Adrian Brennock's company Wollumbin Horizons Pty. Ltd. with himself as sole shareholder for one dollar and sole Director. He was not sole unit holder as suggested and did not hold a unit in the trust as the company but was sole shareholder of the company and therefore believed he unilaterally decided to change the trustee demonstrating his belief he had total control over the company and the affairs of the community. This suggests he knew he had usurped control of the land from any trust or association and proves his knowledge of the fraud. The explanation of this as a lack of professionalism or a form of incompetence is obstructive of the understanding that this was deliberate fraud and an abnegation of any powers vested in a trust requiring voting or efficacious transactional documents or indeed any attempt to go by the book at all. Similarly the liquidation was initiated without any consultation with or voting by members.

24. The assertion in paragraph 109 that "...a second meeting of creditors was held. Again, some defendants wished to raise concerns about the manner in which that meeting was conducted. That also is not an issue in these proceedings. In any event, the meeting was apparently conducted in accordance with the requirements of the *Corporations Act*."

35. This is also untrue as evidence and testimony was adduced showing Brennock had stacked the creditors meeting with proxy votes from supposed trade creditors at the advice of Vincents staff member Ian McKinnon amongst other breaches of duty outlined in the schedules of objections and cross-claim.

36. Paragraph 220 I find particularly galling as the reason evidence was not brought in support of these allegations was that the opportunity to table it was refused. Every effort was made to bring these matters before the court and every effort was made in return to refuse to allow the evidence and to allow a suppression order on the documents and the discussion of the matters on record. Repeated advice regarding the adequacy of the court to determine fairly the issue of land ownership were at odds with the insistence on just two narrow issues to be determined, parts 50 and 51 of the plaintiffs application. This was apparently in the interest of brevity and efficiency yet recognition of the proprietary rights of the purchase money creditors would have been much more efficient and yielded a better outcome for creditors and saved the court time.

37. The planned phoenix move is detailed in the operative part of the mortgage contract involving Wollumbin Horizons and Mt Warning Eco Villiage in a contract for sale of land. These two documents make up Annexure 2. Contract of Sale.

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Annexure 1.

This is an authentic copy of the document entitled Creditors List 19/5/2017

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# Annexure 1 Creditors List. (2 pages)

Wollumbin Horizons p/L.  
Creditors List

19 5 17

		<u>Sum owed</u>	<u>Secured</u>
Rainmaker Eco developments	(A)	\$ 180,000	(Y) Unit #23
	(B)	\$ 49,750	N
Capital Z Holdings - (issued Non Voting Unit as Security)		\$ 48,000	(Y) Unit #2
Wroth Wall Lawyers		\$ 10,000	N
Stone Group Lawyers	\$ 25,000	<del>TBA</del> circa \$25,000	N
Ian McKay Lawyer		\$ 5,000	N
Modoros	circa	\$ 5,000	N
Directors wages / tax / super	circa	\$ 100,000	N/Y
IFB / Rich / Tamati / Steve			
Mount Burrell Commercial		- Total Spent on Renos of the homestead - \$ 10,000	N
Bandery Property Trust	circa	\$ 20,000	N
Gunham Badli Jankamara (Homestead Renos)	circa	\$ 7,500	N
DAC - (Farm planner)	circa	\$ 5,000	N
Tweed shire Council (Legal costs)	circa	\$ 3,000	N
Cherie + Martin (Lawn Mower)		\$ 8,000	Y Bill of sale
MSD (Water tank - Iron)		\$ 3,300	N
Andrew Cody Road repairs / cleaning		\$ 10,000	N
Phil Dixon civil works - consulting		\$ 12,525	N

Total owed. \$ 582,075  
Total Units 11,726

= \$ 49,400

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Williamson Horizons p/44

19 5 17

Unit Holders List.

Names	Number of Units	Purchase Price	Voting	Issued	Notes
RED	1	\$180,000	N	Y	held as security for loan
Lucky 13 trust	1	\$40,000	Y	Y	
Nyepi trust	1	\$40,000	Y	Y	
Dixon Trust	1	\$80,000	Y	Y	
McSweeney	1	\$40,000	Y	Y	
Chene/Martin	1	\$40,000	Y	Y	
Andrew Cody	1	\$40,000	Y	Y	
Gurham Badi	1	\$40,000	Y	Y	
Rich Monte	Blumer	\$80,000	Y	Y	(Issued in line of Payment for Remediation & Legal consulting.)
Mark & Bec	1	\$3,000	Y	Y	
Graham & Sharon	1	\$33,000	N	N	(Partial Payment)
Manu	(1) }	\$40,000	Y	Y	(Issued as security) to be issued
		\$80,000	N	N	(to be issued.)
Ron Berry	1	\$80,000	Y	N	
Phil Morandini	(1) }	\$40,000	Y	Y	
		\$80,000	N	Y	(Add 50% Penalty for Craig)
Dean Mooney	1	\$120,000	Y	Y	
T & Sarah	1	\$40,000	Y	Y	
Melissa Hirsch	(1) }	\$80,000	Y	Y	
		\$80,000	N	N	(To be issued.)
Veriah	1	\$80,000	Y	Y	
Nate	1	\$80,000	Y	Y	
Star & Terry	1	\$90,000	Y	Y	
Stu & Hanna	1	\$80,000	Y	Y	
Brian & Liz	1	\$140,000	Y	Y	
Craig & Holly	(1) }	\$40,000	Y	Y	
		\$80,000	(N)	(N)	
Mary Lou	(1) }	\$80,000	(N)	(N)	
		\$40,000	(N)	(N)	
Nicole Stenters	(1)				
SMSF					
Gi Linda	(1)	\$120,000	(N)	(N)	

\$1,906,000

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Annexure 2.

This is an authentic copy of the document entitled Annexure 2. Contract of Sale

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# Annexure 2. (8pages) Contract of Sale

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## Contract for the sale and purchase of land 2016 edition

TERM	MEANING OF TERM	NSW Duty:
vendor's agent		Phone:
		Fax:
co-agent		Ref:
vendor	WOLLUMBIN HORIZONS PTY LTD (ACN 606 581 364) c/- of Suite 38, Level 4, 46 Cavill Avenue, Surfers Paradise QLD 4215	
vendor's solicitor	Stone Group Lawyers Pty Ltd Suite 1305 56-58 Scarborough Street SOUTHPORT QLD 4215	Phone: (07) 5635 0180 Fax: (07) 5532 4053 Ref: 141329
date for completion	6 months from Contract Date (clause 15)	Email: admin@stonegroup.com.au
land	3222 KYOGLE RD, MOUNT BURRELL 2484	
(Address, plan details and title reference)	20/755714A and 20/755714B and 2/1148316	
improvements	<input checked="" type="checkbox"/> Vacant Possession <input type="checkbox"/> Subject to existing tenancies <input type="checkbox"/> HOUSE <input type="checkbox"/> garage <input type="checkbox"/> carport <input type="checkbox"/> home unit <input type="checkbox"/> carspace <input type="checkbox"/> storage space <input checked="" type="checkbox"/> none <input type="checkbox"/> other:	
attached copies	<input checked="" type="checkbox"/> documents in the List of Documents as marked or as numbered: <input type="checkbox"/> other documents:	

A real estate agent is permitted by legislation to fill up the items in this box in a sale of residential property.

inclusions	<input type="checkbox"/> blinds	<input type="checkbox"/> dishwasher	<input type="checkbox"/> light fittings	<input type="checkbox"/> stove
	<input type="checkbox"/> built-in wardrobes	<input type="checkbox"/> fixed floor coverings	<input type="checkbox"/> range hood	<input type="checkbox"/> pool equipment
	<input type="checkbox"/> clothes line	<input type="checkbox"/> insect screens	<input type="checkbox"/> solar panels	<input type="checkbox"/> TV antenna
	<input type="checkbox"/> curtains	<input type="checkbox"/> other:		

exclusions

purchaser

MOUNT WARNING ECO VILLAGE PTY LTD (ACN 613 275 102)

purchaser's solicitor

Phone:

Fax:

Ref:

price \$ 2,225,000.00

Email:

deposit \$

(10% of the price, unless otherwise stated)

balance \$

contract date

(if not stated, the date this contract was made)

buyer's agent

vendor

ADRIAN PETER BRENNOCK, DIRECTOR

GST AMOUNT (optional)

The price includes

GST of: \$

purchaser

☐ JOINT TENANTS

☐ tenants in common

BREACH OF COPYRIGHT MAY RESULT IN LEGAL ACTION

witness

ISABEL CLAIRE MILLER, SOLICITOR

☐ in unequal shares

MARK DAWSON, witness

141329

36257219

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## LOAN AGREEMENT

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BETWEEN

WOLLUMBIN HORIZONS PTY LTD (ACN 606 581 364)  
AS TRUSTEE FOR THE BHULA BHULA COMMUNITY TRUST  
("MORTGAGEE")

AND

MOUNT WARNING ECO VILLAGE PTY LTD (ACN 613 275 102)  
("MORTGAGOR")

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## SCHEDULE

**Mortgagee:** Wollumbin Horizons Pty Ltd (ACN 606 581 364) as trustee for the Bhula Bhula Community Trust  
**Mortgagee address:** c/- of Suite 38, Level 4, 46 Cavill Avenue, Surfers Paradise in the State of Queensland 4217  
**Mortgagee email address:** ab@rainmakereco.com.au  
**Mortgagee's Solicitors:** Stone Group Lawyers Pty Ltd, Suite 1305, Level 3, Southport Central Commercial Tower 1, 56 Scarborough Street, Southport QLD 4215  
**Mortgagor:** Mount Warning Eco Village Pty Ltd (ACN 613 275 102)  
**Mortgagor address:** c/- of Suite 38, Level 4, 46 Cavill Avenue, Surfers Paradise in the State of Queensland 4217  
**Mortgagor email address:** phill@rainmakereco.com.au  
**Mortgagor's Solicitors:** Jeff Horsey Solicitor  
One Million, Two Hundred and Twenty-Five Thousand Dollars (\$1,225,000.00).  
**Principal Amount:**  
**Secured Moneys:** The aggregate Principal Amount, applicable interest and all other amounts that the Mortgagor agrees to pay under any provision of this Agreement.  
**Term of the Loan:** Five (5) years  
**Date of Loan:** 7<sup>th</sup> JUNE 2017  
**Method of Repayment:** The Mortgagor shall repay the Secured Moneys to the Mortgagee on or before the final day of the Term of the Loan. On the final day of the Term of the Loan, if the Mortgagor has not repaid the all Secured Moneys, then the full outstanding amount shall be immediately due and payable to the Mortgagee of the Mortgagee's estate.  
  
**Fixed or variable interest rate:** During the Term of the Loan, the interest rate shall be fixed at 3% per annum, calculated on the outstanding Principal Amount (plus any accrued but unpaid interest). In the event that the Secured Moneys is not repaid to the Mortgagee during the Term of the Loan, the interest rate shall increase to 6% per annum, calculated on the outstanding Principal Amount (plus any accrued but unpaid interest).  
  
**Mortgaged property:** Lot 20 in Deposited Plan 755714A, Parish of Kunghur, County of Rous, Lot 20 in Deposited Plan 755714B, Parish of Kunghur, County of Rous, and Lot 2 in Deposited Plan 1148316, Parish of Kunghur, County of Rous  
**Folio identifier:**  
**Address:** 3222 Kyogle Road, Mount Burrell 2484 in the State of New South Wales

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## OPERATIVE PART

### 1. Definitions

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In this Agreement, unless the context requires otherwise:

**Agreement** means this loan agreement between the Mortgagor and Mortgagee.

**Business Day** means a day other than a Saturday or Sunday, or a public, special or bank holiday in the State of New South Wales.

**Memorandum** means the standard mortgage conditions annexed as a schedule to the mortgage.

**Mortgaged Property** means the mortgaged property referred to in the Schedule to this Agreement being 3222 Kyogle Road, Mount Burrell 2484 in the State of New South Wales (better described Lot 20 in Deposited Plan 755714A, Parish of Kunghur, County of Rous, Lot 20 in Deposited Plan 755714B, Parish of Kunghur, County of Rous, and Lot 2 in Deposited Plan 1148316, Parish of Kunghur, County of Rous) and such other real property as the Mortgagee reasonably requires the Mortgagor to provide as security for repayment of the loan provided under this Agreement.

**Mortgagee** means Wollumbin Horizons Pty Ltd (ACN 606 581 364) as trustee for the Bhula Bhula Community Trust, and includes its directors, shareholders, successors in title and permitted assigns.

**Mortgagor** means Mount Warning Eco Village Pty Ltd (ACN 613 275 102) and includes its successors in title and permitted assigns.

**Principal** means the amount referred to in the Schedule to this Agreement.

**Schedule** means the schedule at page 2 of this Agreement.

### 2. Loan

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- a) The Mortgagee agrees to advance to the Mortgagor the Principal Amount on the terms of this Agreement.
- b) The Mortgagor agrees to grant to the Mortgagee a first priority registered mortgage over the Mortgaged Property on the terms provided for in the Memorandum registered at the Land and Property Registry of New South Wales. The provisions of that Memorandum are incorporated in this Agreement.

### 3. National Credit Code does not apply

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- a) This Agreement is not made pursuant to the National Credit Code regulating loans by mortgagees in the business of making residential loans. If this Agreement is found to be governed by such code resulting in different obligatory requirements from those set out herein then the performance of those obligations shall apply to the extent required by such code without affecting the enforceability of the other provisions hereof.

### 4. Repayments

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- a) The Mortgagor must repay the Secured Moneys in full on or before the date of completion of the Term of the Loan.

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## 5. Calculation of interest

### Compounding

- a) For the purposes of calculation of interest, the Secured Moneys shall include the balance of the Principal Amount, all unpaid interest and all other amounts then due under this Agreement or the mortgage.
- b) In the event one (1) or more payments are overdue, notwithstanding the mortgagor may seek to specify that a payment is a payment in respect of a specific overdue amount, all payments shall be credited to such overdue payments before being credited to presently due payments.

## 6. Fixed interest

- a) The Schedule specifies that this is a fixed interest loan, and accordingly interest shall be calculated by applying the rates specified in the Schedule to the outstanding Loan Amount plus any accrued but unpaid interest.

## 7. Further advances


- a) From time to time the Mortgagor and the Mortgagee may agree in writing to the making of further advances on such terms as to interest and repayments as are agreed. Such writing shall form part of this Agreement and all rights and obligations relating to such further advances shall be the same as those contained in this Agreement.

## 8. Trusts

- a) If the Mortgagor holds the Mortgaged Property as a trustee of a trust, then the Mortgagor is bound by the obligations of this Agreement and mortgage personally as well as in the capacity of the trustee of a trust whether or not the instrument evidencing the trust has been produced to the Mortgagee.
- b) The Mortgagor as trustee covenants that the trustee has full power to enter into this mortgage and is indemnified by the trust against any losses that may eventuate as a result of the trustee entering into this mortgage.
- c) The Mortgagor is liable for the obligations in this Agreement and its liability is not limited to the estate or interest of the Mortgagor as trustee of the Mortgaged Property.
- d) Nothing shall prejudice, affect or in any way limit the liability of the Mortgagor under this mortgage or oblige the Mortgagee to concern itself with the application of any money paid or credited to the Mortgagor, or to make any inquiry as to any right or claim by any person other than the Mortgagor to any money so paid or credited; or oblige the Mortgagee to take notice of any actual, contingent or future interest of any person in or under the trust.

## 9. Default

- a) In the event any one (1) or more of the events of default (Events of Default) set out below shall occur, the Mortgagee may by notice in writing to the Mortgagor require the Mortgagor to rectify the breach within thirty (30) days (Breach Notice). Following the passing of thirty (30) days of the date of a Breach Notice, the Mortgagee may immediately require the repayment the full amount of the outstanding Secured Moneys. The Mortgagee may also sue the Mortgagor for any amount owing under this Agreement and enforce any rights the Mortgagee has in relation to the Mortgaged Property, including selling the property to recover the Secured Moneys. For the purposes of this clause the following are events of default:

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- i. failure by the Mortgagor to comply with any of the covenants expressed or implied in this Agreement, the mortgage and any other collateral agreement;
- ii. failure by the Mortgagor in the due and punctual payment of any money as payment falls due under this Agreement, the mortgage or any other collateral agreement;
- iii. being a trustee the Mortgagor without the prior written consent of the Mortgagee ceases to be the trustee;
- iv. the Mortgagor becoming bankrupt or being a corporation going into liquidation, voluntary administration or insolvency;
- v. if the Mortgagor is a company, a change in the ownership of shares attaching more than 50% of the voting rights;
- vi. a power of sale arises under the Mortgaged Property; or
- vii. any judgment is enforced against the Mortgaged Property.

#### 10. Interest following judgement

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- a) The Mortgagor agrees as an independent obligation which will not merge in any judgment, to pay interest on any judgment or order for the payment of all or any part of the money secured at the rate payable under the judgment.

#### 11. Invalidity by operation of law

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- a) If any provision of this Agreement is invalid due to the operation of any statute or rule of law, then such provision is severed from this Agreement.

#### 12. Further assurance and power of attorney

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- a) The Mortgagor shall, whenever requested by the Mortgagee and at the cost and expense of the Mortgagor, do or cause to be done anything requested by the Mortgagee to further and more satisfactorily assure the Mortgagor's obligations under this Agreement.
- b) The Mortgagor irrevocably appoints the Mortgagee as its attorney with authority to do any act and sign any document as may be necessary to give effect to the Mortgagor's obligations under this Agreement.

#### 13. Indemnity

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- a) The Mortgagor indemnifies the Mortgagee against all liabilities arising out of the Mortgagee's exercise of its powers under this Agreement and against any actions or proceedings against the Mortgagee in respect of any action or omission by the Mortgagee whilst exercising the Mortgagee's powers. Any money received by the Mortgagee may be used to give effect to this indemnity.

#### 14. Loss

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- a) The Mortgagee will not be liable for any loss arising out of the exercise of any of the Mortgagee's powers, and the Mortgagor indemnifies the Mortgagee against all such losses.

**15. Costs**

- a) The Mortgagor is solely responsible for all costs, fees and expenses (including legal expenses on a full indemnity basis) in connection with the negotiation, preparation, execution, stamping and registration of this Agreement and the mortgage, and the exercise of the powers of the Mortgagee on default.

**16. Independent financial and legal advice**

- a) The Mortgagor agrees that they have sought such financial and legal advice as they considered appropriate for an understanding of this Agreement before entering into it, and enters this Agreement by its own free will and under no duress.

**17. Notices**

- a) A notice or other communication to a party must be in writing and delivered to that party in one of the following ways:
- i. delivered personally; or
  - ii. posted to the address specified in the Schedule, when it will be treated as having been received on the second Business Day after posting; or
  - iii. sent by email to the email address specified in the Schedule, when it will be treated as received when it enters the recipient's information system.

**18. Interpretation**

- a) This Agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that state and the Commonwealth of Australia.
- b) In the interpretation of this Agreement:
- i. words denoting the singular include the plural and vice versa; words denoting individuals or persons include bodies corporate and vice versa; references to documents or Agreements also mean those documents or Agreements as changed, novated or replaced, and words denoting one gender include all genders;
  - ii. grammatical forms of defined words or phrases have corresponding meanings;
  - iii. parties must perform their obligations on the dates and times fixed by reference to the state in which the Mortgaged Property is situated;
  - iv. reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
  - v. if the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in New South Wales, then it must be done on the next Business Day;
  - vi. references to a party are intended to bind their executors, administrators and permitted transferees;
  - vii. obligations affecting more than one party bind them jointly and each of them severally; and
  - viii. reference to the advance or the debt or money secured or money owing means the advance, the principal, interest, further advances and all other money payable from time to time by the Mortgagor to the Mortgagee.

## EXECUTED AS AN AGREEMENT

SIGNED SEALED & DELIVERED BY  
WOLLUMBIN HORIZONS PTY LTD (ACN 606  
581 364) AS TRUSTEE FOR THE BHULA  
BHULA COMMUNITY TRUST in accordance  
with section 127(1) of the Corporations Act 2001  
(Cth):

  
ADRIAN PETER BRENNOCK, Director

Cherie Stokes

Signature of witness

Cherie Stokes

Print name of witness

SIGNED SEALED & DELIVERED BY  
MOUNT WARNING ECO VILLAGE PTY  
LTD (ACN 613 275 102) in accordance with  
section 127(1) of the Corporations Act 2001  
(Cth):

  
MARTIN MADDREN, Director

  
PHILLIP JOHN DIXON, Director

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